

These are the tentative rulings for civil law and motion matters set for Tuesday, February 10, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, February 9, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances are governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

---

**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

---

**1. M-CV-0060679 Smith, Tim vs. Sportsmans Gun Room, Inc., et al**

Plaintiff's Motion for Order to Have Matters Set Forth in Request for Admissions Deemed Admitted is granted. Plaintiff's first and second sets of requests for admissions to defendant Sabrina Donohue are deemed admitted. Plaintiff is awarded monetary sanctions from Sabrina Donohue in the amount of \$340. Code Civ. Proc. § 2033.280(c).

**2. M-CV-0062722 Hines, James, et al vs. Andrews, Harry Lee Jr.**

Defendant's Motion to Vacate Judgment is granted.

The court takes judicial notice of the document entitled "Notice of Time and Place of Trial" filed January 7, 2015, which includes a certificate of service by mail showing service made by the deputy clerk of the court to defendant at "514 Riverside Avenue aka 514 Riverside Avenue (front shop), Roseville, CA 95678." This address is not the address of record for defendant, as set forth on defendant's answer. There is no evidence before the court that defendant was provided proper notice of the trial. Accordingly, the judgment entered January 23, 2015 is vacated, and the writ of possession issued on the same date is hereby recalled.

**3. M-CV-0062913 Ergo, Richard vs. Keller, Mary**

Appearance is required on February 10, 2015 at 8:30 a.m. in Department 40.

**4. S-CV-0030222 Bennett, Richard, et al vs. Centex Homes, et al**

Cross-defendant Ad Land Venture's Motion for Determination of Good Faith Settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling party's proportionate share of liability for plaintiffs' injuries, and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

**5. S-CV-0030637 Agutos, Florencio, et al vs. Centex Homes**

Travelers' Demurrer to First Amended Cross-Complaint

St. Paul Fire & Marine Insurance Company and Travelers Property Casualty Company of America's ("Travelers") Demurrer to First Amended Cross-Complaint is overruled.

The function of a demurrer is to test the legal sufficiency of the pleadings, not to challenge its truthfulness. *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994. In ruling on the demurrer, the court may consider only the face of the pleading under attack, and outside matters that are judicially noticeable. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. Further, while the existence of documents in the court's file may be judicially noticeable, the truth of statements contained therein, and their proper interpretation, are not subject to judicial notice. *Fremont Indemnity Co. v. Fremont Gen. Corp.* (2007) 148 Cal.App.4th 97, 113. In this case, Travelers requests judicial notice of an exhibit submitted in connection with Centex Homes' motion for leave to file an amended cross-complaint. While the court may take judicial notice of the existence of such document as part of the court's file, the court does not accept, for the purpose of ruling on this demurrer, the truth of the matters stated therein.

In ruling on the demurrer, the court is concerned only with whether the allegations sufficiently state a cause of action. Travelers cites extensively to case law examining summary judgments or post-trial verdicts, which fail to address standards of pleading. The allegations of the first amended cross-complaint, when read as a whole, sufficiently allege facts to support causes of action for breach of contract and breach of the covenant of good faith and fair dealing. Accordingly, the demurrer is overruled.

Travelers' Motion to Strike Punitive Damage Claims

Travelers' Motion to Strike Punitive Damage Claims is granted in part, and denied in part.

The motion is granted without leave to amend as to the request for punitive damages prayed for with respect to Centex Homes' tenth cause of action for breach of contract. The motion is otherwise denied. The allegations of the first amended cross-complaint, when read as a whole, sufficiently allege facts to support a request for punitive damages as to Centex Homes' eleventh cause of action for breach of the implied covenant of good faith and fair dealing.

Travelers shall file and serve its answer to the first-amended cross-complaint by no later than February 27, 2015.

**6. S-CV-0031959 Spann, William vs. CBM-96, LLC, et al**

The Demurrers to Third Amended Cross-Complaint and Motions to Strike are dropped, as the moving parties have been dismissed from this action.

**7. S-CV-0032871 Degrinis, James vs. Ford Motor Company**

This tentative ruling is issued by the Honorable Charles D. Wachob. Appearance is required on February 10, 2015 at 8:30 a.m. in Department 42. Telephonic appearance is permitted.

**8. S-CV-0034103 Rodemann, Paul A. vs. EMC Mortgage, Inc., et al**

This tentative ruling is issued by the Honorable Mark S. Curry. If oral argument is requested, it shall be heard on February 10, 2015 at 8:30 a.m. in Department 32.

Defendants' request for judicial notice is granted.

Defendants' Demurrer to Second Amended Complaint is overruled in part, and sustained in part without leave to amend, as set forth below.

Plaintiff's first cause of action for fraud fails to state a valid claim. Plaintiff alleges no facts to support the assertion that defendants did not have authority from the true holder of the subject loan to discuss loan modification with plaintiff. To the extent plaintiff argues that an assignment of deed of trust is void as attempting to transfer property into a securitized trust after the closing date, this argument fails. A borrower lacks standing to challenge an assignment absent a showing of prejudice. *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 271. This claim is also not alleged with sufficient particularity, as plaintiff fails to allege facts showing when the purported representations were made by defendants, or the identify of the persons making the alleged representations. When pleading fraud against corporate defendants, plaintiffs must specify the identity of the person who made the misrepresentation, his authority to speak on behalf of the corporation, and when and to whom the representation was made. *Tarmann v. State Farm Mut. Auto Ins. Co.* (1991) 2 Cal.App.4th 153, 157. The allegations of the fourth cause of action for fraud and sixth cause of action for negligent misrepresentation mirror plaintiff's assertions regarding defendants' authority with respect to the subject loan because of purported improper securitization, and contain the same defects as the first cause of action. Accordingly, the demurrer is sustained with respect to plaintiff's first, fourth and sixth causes of action.

Plaintiff's second cause of action for fraud fails to state a valid claim. Plaintiff alleges that he and his agent were told by "Customer Service representatives" that if he timely made payments and followed instructions under the written three month Trial Period Plan (TPP), he would be given a permanent modification. Plaintiff does not allege that such representations

were known to be false when made, or made with no intention of performance. The assertion that defendants knew that plaintiff would not be given a permanent loan modification is belied by the admission that plaintiff did eventually receive a permanent loan modification. This claim is not alleged with sufficient particularity, as plaintiff fails to allege facts showing when the purported representations were made by defendants, or the identify of the persons making the alleged representations. When pleading fraud against corporate defendants, plaintiffs must specify the identity of the person who made the misrepresentation, his authority to speak on behalf of the corporation, and when and to whom the representation was made. *Tarmann v. State Farm Mut. Auto Ins. Co.*, *supra*, 2 Cal.App.4th at 157. The allegations of the fifth cause of action for negligent misrepresentation mirror plaintiff's the assertions of the second cause of action, and contain the same defects. Accordingly, the demurrer is sustained with respect to plaintiff's second and fifth causes of action.

Plaintiff's third cause of action for fraud fails to state a valid claim. This cause of action contains various purported representations, including that MERS made representations "regarding MERS' role and authority with regard to the Subject Loan", that defendants "strung Plaintiff along, promising loan modification", that EMC "falsely represent[ed] to Plaintiff that they were not required to give him the permanent modification", and that Chase "continued to misrepresent its intentions..." (SAC, ¶¶ 108-110.) Again, plaintiff fails to allege facts showing the identify of the persons making the representations, when the representations were made, or the authority of the speakers to speak on behalf of the defendant corporations. To the extent not already addressed with respect to plaintiff's other fraud claims, the purported representations are vague and not actionable. The demurrer is sustained with respect to plaintiff's third cause of action for fraud.

The demurrer is sustained with respect to plaintiff's tenth cause of action for conversion. Plaintiff alleges insufficient facts to support the assertion that Chase was not in fact the servicer of the loan, or that other defendants were not in fact the beneficiaries, or had no legal right to collect on the debt. The demurrer is sustained with respect to plaintiff's eleventh cause of action for wrongful foreclosure, as plaintiff admits that this cause of action is moot. Finally, the demurrer is sustained with respect to plaintiff's twelfth cause of action for declaratory relief. As previously stated, there is no support for plaintiff's assertion that transfers to the trust after the closing date give rise to a cause of action by plaintiff.

Upon review of the remaining causes of action set forth by plaintiff, the court finds that the second amended complaint, read as a whole, adequately alleges facts supporting plaintiff's seventh cause of action for breach of contract, eighth cause of action for breach of the covenant of good faith and fair dealing, ninth cause of action for promissory estoppel, and thirteenth cause of action for violation of Business and Professions Code sections 17200 *et seq.*

The court presumes that the facts alleged in the second amended complaint state the strongest case for plaintiff. *Live Oak Publishing Co. v. Cohagan* (1991) 234 Cal.App.3d 1277, 1286. Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. A demurrer shall be sustained without leave to amend absent a showing by plaintiff that a reasonable possibility exists that the defects can be cured by amendment.

*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. Plaintiff was previously given leave to amend, but with respect to the first through sixth, and tenth through twelfth, causes of action, the second amended complaint remains deficient. Nor does plaintiff make any showing that the second amended complaint can be amended to change its legal effect. Accordingly, with respect to the first through sixth, and tenth through twelfth, causes of action, the demurrer is sustained without leave to amend.

Defendants shall file and serve their answer to the second amended complaint by no later than February 27, 2015.

**9. S-CV-0034791 Chapman, Byron, et al vs. Pulte Home Corporation, et al**

Financial Pacific Insurance Company's Motion for Leave to Intervene on Behalf of Cross-Defendant Martin Magdaleno, Inc., dba El Dorado Grading Company is granted. Moving party shall file and serve its complaint-in-intervention by no later than February 27, 2015.

**10. S-CV-0034809 Dept. of Fair Employment/Housing vs. Awad, Majdi, et al**

Defendant's Demurrer to Second Amended Complaint is overruled.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.

Plaintiff's fourth cause of action against defendant Ibrahim "Abe" Awad (Awad) alleges a violation of Civil Code section 52 with respect to Civil Code section 51.7, in that Awad allegedly aided, incited or conspired in the denial of real party in interest Sandra Tompkins' (Tompkins') right to be free from violence on account of her sex. Awad argues that inaction, or the failure to prevent or correct wrongful conduct cannot create liability under Civil Code section 52. However, in this case, plaintiff alleges conduct beyond the failure to prevent or correct. Plaintiff alleges that Awad took affirmative action to destroy evidence of the assault by taking Tompkins' cell phone without permission and deleting her text message to him which reported the attack, and by removing the lock from the restroom door where the assault took place, that plaintiff was discouraged from asserting her rights under Civil Code section 51.7, and that plaintiff never returned to her employment at that location due to the attack. Upon review of the second amended complaint as a whole, the court finds that plaintiff has sufficiently pled facts to support its fourth cause of action.

Defendant Awad shall file and serve his answer to the second amended complaint by no later than February 27, 2015.

**11. S-CV-0035119 Macrae, Nancy vs. Macrae, Donald S.**

Appearance required on February 10, 2015 at 8:30 a.m. in Department 40.

**12. S-CV-0035203 Silva, Sandra vs. Springfield, David, et al**

The Motion to Withdraw as Counsel of Record was continued to February 24, 2015 at 8:30 a.m. in Department 40.

The Motion to Compel Compliance With Subpoena was dropped by the moving party.

**13. S-CV-0035603 AZA Properties LLC vs. Union Bank NA, et al**

Defendants' Motion for Order Expunging Lis Pendens is granted.

A lis pendens may be expunged on the grounds that plaintiff cannot establish the probable validity of real property claims by a preponderance of the evidence. Code Civ. Proc. § 405.32. The burden of proof is on the party opposing the motion to expunge. *Id.* In this case, plaintiff filed no opposition to defendants' motion to expunge. Accordingly, plaintiff fails to satisfy its burden of establishing the probable validity of its real property claims by a preponderance of the evidence.

**14. T-CV-0001909 Burdick, Linda T. vs. Phillips, Paul et al**

Plaintiff's Motion to Amend Complaint is granted. Plaintiff shall file and serve her amended complaint by no later than February 20, 2015.

Defendant's Motion to Continue/Vacate Trial is granted. **The current trial date of April 27, 2015, as well as the attendant mandatory settlement conference and civil trial conference hearing dates, are vacated. A case management conference for the purpose of trial setting is set for April 3, 2015 at 9:00 a.m. in Department 14.**

---

**These are the tentative rulings for civil law and motion matters set for Tuesday, February 10, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, February 9, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.**